Supreme Court of the United States.

No. 126.—October Term, 1904.

Martha S. Munsey, Plaintiff in Error, *vs.* M. Swain Clough, Sheriff of Merrimack County.	In error to the Superior Court of the State of New Hampshire.

[January 30, 1905.]

Mr. Justice Peckham delivered the opinion of the Court.

This was a proceeding on *habeas corpus* in a State court of New Hampshire to obtain the discharge of the plaintiff in error from arrest under a warrant given by the governor of that State, directing the return of the plaintiff in error to the Commonwealth of Massachusetts, as a fugitive from justice. Upon the hearing the State court refused to discharge the plaintiff in error, the order of refusal was affirmed by the Supreme Court, and she has brought the case here for review. (On a former proceeding in Supreme Court, see 71 N. H. 594.)

The proceedings before the governor of New Hampshire to obtain the warrant of arrest were taken under section 5278 of the Revised Statutes of the United States, re-enacting the statute approved February 12, 1793, (1 Stat. 302; 3 U. S. Comp. Stat. page 3597,) relating to the arrest of persons as fugitives from justice, under clause 2 of section 2 of article 4 of the Constitution of the United States.

The papers before the governor of New Hampshire consisted of a copy of an indictment of the plaintiff in error, found in Massachusetts on the second Monday of February, 1902; it contained three counts, and charged the plaintiff in error with uttering and publishing as true a certain forged instrument, purporting to be a will, well knowing the same to be forged. The first count alleged that the crime was committed on the 28th of February, 1895, at Cambridge, in the county of Middlesex, in the Commonwealth of Massachusetts; and it also alleged that since the commission of the offence the plaintiff had not been usually or publicly a resident in that Commonwealth.

The second count averred the uttering, &c., to have been on the 17th day of May, in the year 1895, in the same place, and the indictment had the same averment as to the non-residence of the plaintiff in error as contained in the first count.

The third count averred the uttering at the same place as that named in the other two counts, but laid the date as the 20th day of November,

1901. There was also before the governor of New Hampshire an application, dated the 26th of February, 1902, signed by George A. Sanderson, district attorney for the Northern District of Middlesex, to the governor of Massachusetts, requesting a requisition from him upon the governor of New Hampshire for the extradition of the plaintiff in error, who, as stated in the application, stood charged by indictment with the crime of uttering forged wills, committed in the county of Middlesex, (on the days stated in the indictment,) and who, to avoid prosecution, had fled from the jurisdiction of the Commonwealth and was a fugitive from justice, and was within the jurisdiction of the State of New Hampshire. It was also stated in the application that the indictment was not found by the grand jury until the February sitting of the Superior Court in the year 1902. There was also before the governor of New Hampshire a copy of what purported to be an affidavit of one Whitney, the original of which was used before the governor of Massachusetts, to obtain the requisition It is short, and is as follows:

"Commonwealth of Massachusetts, } *ss:*
Middlesex. }

"I, Jophanus H. Whitney, of Medford, in the county of Middlesex and said Commonwealth, on oath depose and say that Martha S. Munsey, who stands charged by indictment with the crime of uttering forged wills, as is more fully set forth in the papers hereto annexed, has fled from the limits of said Commonwealth and is a fugitive from justice. And I further depose that at the time of the commission of said crime she was in the State of Massachusetts, in the county of Middlesex of said Commonwealth, and that at the same time and previous thereto she was a resident of Cambridge in the said county of Middlesex; that she fled from said Commonwealth of Massachusetts on or about the fourth day of November, A. D. 1901; that she is not now within the limits of the Commonwealth, but, as I have reason to believe, is now in Pittsfield, in the State of New Hampshire. The grounds of my knowledge are that I have interviewed her since the fourth of November last in Pittsfield, New Hampshire, where she was living with her husband during the last week January last.

JOPHANUS H. WHITNEY."

There was also a certificate of the district attorney for the Northern District of Middlesex, that the offence charged against the plaintiff in error is a felony within that Commonwealth, and that application for the arrest and return of the fugitive had not been sooner made because the indictment was not found by the grand jury until February, 1902.

The governor of the Commonwealth of Massachusetts having given the requisition applied for, the papers above mentioned were presented to the governor of New Hampshire, and a request made that he should issue his warrant of arrest to take the plaintiff in error back to the Commonwealth of Massachusetts, as a fugitive from justice, and for the purpose of being tried on the indictment referred to. The counsel for the plaintiff in error

appeared before the governor and stated they desired a hearing before him before the warrant of arrest should be granted. This hearing was refused, and the governor then granted the warrant for the arrest and return of the plaintiff in error to the Commonwealth of Massachusetts as a fugitive from justice. In that warrant it was provided that the plaintiff in error should be afforded an opportunity to sue out a writ of *habeas corpus* before being delivered over to the authorities of Massachusetts. She availed herself of that right and sued out such writ, and upon its return the plaintiff in error made several objections to the execution of the governor's warrant, and alleged the insufficiency of the papers to authorize the granting of the same. At the close of the hearing the counsel for plaintiff in error moved that she be discharged for the reasons stated in the motion; the motion was denied, subject to the objection and exception of the plaintiff in error. The record then shows the following:

"The court thereupon ordered that the relator proceed to introduce evidence upon the question whether she was in fact a fugitive from justice. This the relator's counsel declined to do, upon the ground that such action, on their part, would constitute a waiver of their right to object to the refusal of the governor to grant a hearing upon this question of fact.

"The court then directed that the counsel for the relator state whether the relator waived the right to then, or at any future time, introduce further evidence upon this, or any question of fact, and counsel for relator declared that she did waive that right.

"No evidence was offered by the relator either upon the question whether the relator was a fugitive from justice, or upon any other question of fact, other than as above stated."

The question of the legality of the detention of the plaintiff in error is thus brought before the court. The proceedings in matters of this kind before the governor are summary in their nature. The questions before the governor, under the section of the Revised Statutes, above cited, are whether the person demanded has been substantially charged with a crime, and whether he is a fugitive from justice. The first is a question of law and the latter is a question of fact, which the governor, upon whom the demand is made, must decide upon such evidence as is satisfactory to him. Strict common law evidence is not necessary. The statute does not provide for the particular kind of evidence to be produced before him, nor how it shall be authenticated, but it must at least be evidence which is satisfactory to the mind of the governor. (*Roberts* v. *Reilly*, 116 U. S. 80, 95.) The person demanded has no constitutional right to be heard before the governor on either question, and the statute provides for none. To hold otherwise would in many cases render the constitutional provision, as well as the statute passed to carry it out, wholly useless. The governor, therefore, committed no error in refusing a hearing. The issuing of the warrant by him, with or without a recital therein that the person demanded is a fugitive from justice, must be regarded as sufficient to justify the re-

moval, until the presumption in favor of the legality and regularity of the warrant is overthrown by contrary proof in a legal proceeding to review the action of the governor. (*Roberts* v. *Reilly, supra*; *Hyatt* v. *The People*, 188 U. S. 691.)

After the decision of the governor and the issuing of the warrant the plaintiff in error sued out this writ of *habeas corpus* for the purpose of reviewing his action. The position taken by the plaintiff in error upon the hearing on the return of the writ in refusing to introduce evidence upon the question whether she was in fact a fugitive from justice left the case for decision upon the papers before the governor upon which he acted in issuing the warrant of arrest. We have no doubt that a *prima facie* case was made out, and as the plaintiff in error waived any right to give further evidence, she is concluded by that *prima facie* case. The indictment undoubtedly set forth a substantial charge against the plaintiff in error, and the facts therein set forth constituted a felony in the Commonwealth of Massachusetts, as certified by the district attorney. The sufficiency of the indictment, as a matter of technical pleading, will not be inquired into on *habeas corpus*. (*Ex parte Reggel*, 114 U. S. 642; *Pearce* v. *Texas*, 155 U. S. 311; *Ex parte Hart*, 59 Fed. Rep. 894.)

If the indictment be for three distinct offences (although of the same nature) set out in the three different counts, as is argued by plaintiff in error, it will not be presumed that such an indictment is void under the laws of Massachusetts, and the question of procedure under the indictment is one for the courts of the State where it was found. The courts of that State would undoubtedly protect her in the enjoyment of all her constitutional rights. These are matters for the trial court of the demanding State, and are not to be inquired of on this writ. If it appear that the indictment substantially charges an offence for which the person may be returned to the State for trial, it is enough for this proceeding.

Upon the question of fact, whether the plaintiff was a fugitive from justice, her counsel, in the argument before this court, set up several objections of a technical nature, which, he argued, showed that the plaintiff in error was not present in Massachusetts at the time when one of the crimes, at least, was alleged to have been committed. As the indictment sets up in the first two counts that the plaintiff in error had not been usually or publicly a resident of Massachusetts at any time since the commission of the offence set forth in those counts, it is argued that the indictment shows that she was not present in the State at the time when the third count charges a crime to have been committed, and the Whitney affidavit shows she fled from the State before the alleged commission of the crime set forth in the third count. There is no impossibility in the plaintiff in error having returned and been present in the State at the time of the alleged commission of the offence set forth in the third count, even though she had not been

"usually or publicly a resident of that State" since the time when it is alleged that she committed the offences set forth in the first two counts, and had fled therefrom before the commission of the last offence set forth in the third count. The affidavit of Mr. Whitney is to the effect that at the time of the commission of the crimes she was in the State of Massachusetts, and that at the same time and previous thereto she was a resident of Cambridge, in the county of Middlesex. Whether she was a resident or not is not important, as to the third count, if she were present in the State and committed the crime therein. The statement in the affidavit that she fled on *or about* the 4th day of November, 1901, while the third count of the indictment avers the commission of the crime on the 20th of November of that year, is sufficiently exact, considering the facts in the case, as the affiant states, that she was in the Commonwealth at the time of the commission of the crime. Reasonably construed, the affidavit of Whitney shows the presence of the plaintiff in error in the State, and is sufficient, unexplained and uncontradicted, for that purpose.

When it is conceded, or when it is so conclusively proved, that no question can be made that the person was not within the demanding State when the crime is said to have been committed, and his arrest is sought on the ground only of a constructive presence at that time, in the demanding State, then the court will discharge the defendant. (*Hyatt* v. *The People &c.*, 188 U. S. 691, affirming the judgment of the New York Court of Appeals, 172 N. Y. 176.) But the court will not discharge a defendant arrested under the governor's warrant where there is merely contradictory evidence on the subject of presence in or absence from the State, as *habeas corpus* is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused. As a *prima facie* case existed for the return of the plaintiff in error, and she refused to give any evidence upon the return of the writ which she had herself sued out, other than the papers before the governor, no case was made out for her discharge, and the judgment of the Supreme Court of New Hampshire refusing to grant it must, therefore, be

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.